IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 20TH DAY OF MARCH 2015/29TH PHALGUNA, 1936

WP(C).No. 8967 of 2015 (U)

PETITIONER :

K. K. ABDUL SAMEER, AGED 32 YEARS,
MULIYANGAL MEETHAL HOUSE, CHENOLI P.O.,
PERAMBRA, KOZHIKODE DISTRICT.

BY ADV. SRI.C.K.PRASAD

RESPONDENTS :
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1. THE INDUSIND BANK LIMITED,
1ST FLOOR, PARK COMPLEX, PARK ROAD,
NEAR NEW BUS STAND, VADAKARA,
KOZHIKODE DISTRICT, PIN - 673101,
REPRESENTED BY ITS AUTHORISED OFFICER.

2. THE BRANCH MANAGER, THE INDUSIND BANK LIMITED,
1ST FLOOR, PARK COMPLEX, PARK ROAD,
NEAR NEW BUS STAND, VADAKARA,
KOZHIKODE DISTRICT PIN 0 673101.

BY SRI.VARGHESE C.KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 8967 of 2015 (U)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE PETITIONER'S 'A' CLASS CONTRACTOR I.D.CARD ISSUED BY THE PUBLIC WORKS DEPARTMENT DT 3/5/2013.

P2: COPY OF THE REPAYMENT SCHEDULE IN RESPECT OF THE HIRE PURCHASE LOAN AGREEMENT HAVING NO. ESG 00013E DT 29/1/2014.

P3: COPY OF THE DEMAND NOTICE ISSUED BY THE R2 DATED NIL.

P4: COPY OF THE NOTICE GIVEN TO THE PETITIONER BY THE ADVOCATE COMMISSIONER IN CMP NO. 431/2015 OF THE HONOURABLE CHIEF JUDICIAL MAGISTRATE COURT, KOZHIKODE DT 9/3/2015.

P5: COPY OF THE NOTICE DT 11/3/2015 ISSUED BY THE R1.

P6: COPY OF THE SITE HANDING OVER ORDER ISSUED TO THE PETITIONER BY THE KAYANNA GRAMA PANCHAYATH DT 10/10/2013.

P7: COPY OF THE RELEVANT PAGE OF THE AGREEMENT NO. EE/LSGD/40/2013-14 DT 10/10/2013.

P8: COPY OF THE RECEIPTS DT 30/1/2015, 31/1/2015 AND 24/2/2015 ISSUED BY THE R2 IN RESPECT OF THE LAST 3 REPAYMENTS.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.8967 of 2015 (U)

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Dated this the 20th day of March, 2015

JUDGMENT

The petitioner, who had availed of a loan from the respondent Bank in the year 2010, defaulted in re-payment of the same. Consequently, the respondent bank initiated proceedings under the Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as the 'SARFAESI Act', against the petitioner. Ext.P4 is the notice, issued under the SARFAESI Act, by the Advocate Commissioner pursuant to the order of the Chief Judicial Magistrate, Kozhikode, to the petitioner in that regard. In the writ petition, the petitioner impugns the steps initiated by the respondent Bank for recovery of the loan amounts.

2. I have heard Sri.C.K.Prasad, learned counsel for the petitioner and Sri.Varghese C.Kuriakose, learned Standing counsel appearing for the respondents.

3. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that the sole prayer of the petitioner is to permit him to remit the overdue amount to the bank in easy installments. Taking into account the plea of financial hardship raised by the petitioner, I dispose the

writ petition with the following directions:

i. (i) The total overdue amount in respect of the loan is stated to be Rs.1,80,000/-. Accordingly, if the petitioner pays an amount of Rs.1,00,000/- on or before 24.03.2015 and the balance amount of Rs.80,000/-, on or before 31.03.2015; and continues to pay the regular monthly installments as per the original loan schedule, then, the recovery steps initiated against him by the respondent bank shall be kept in abeyance.

ii. On the petitioner making the first payment of Rs.1,00,000/- on 24.03.2015, the respondent Bank shall release the vehicle to the petitioner.

iii. It is made clear that, if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this judgment and the respondent bank will be free to continue the recovery proceedings against him from the stage at which they presently stand.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/21/03/